

STEVEN FINK,)
)
Movant,)
)
v.) No. 4:12CV930 RWS
)
UNITED STATES OF AMERICA,)
)
Respondent.)

Steven Fink has filed a motion attacking his sentence under 28 U.S.C. § 2255. However, given the unusual procedural posture in this case, I am unable to determine whether this action is ripe for review at this time. Fink filed a late notice of appeal in the underlying criminal action, United States v. Fink, 4:10CR593 RWS. And he filed a motion for permission to file a late appeal under Rule 4(b)(4) of the Federal Rules of Appellate Procedure. I denied the motion, and I also denied Fink's motion to proceed in forma pauperis on appeal. However, Fink's appeal is still pending before the Eighth Circuit Court of Appeals, and the Court of Appeals may still allow him to proceed with his late appeal. Alternatively, the Court of Appeals may dismiss the appeal for failure to prosecute or lack of jurisdiction. See United States v. Fink, Case No. 12-1813 (8th Cir., Order of May 29, 2012) (directing Fink to pay the appellate filing fee).

If the Court of Appeals permits Fink to continue with his appeal, then the judgment in the criminal action is not final and Fink's § 2255 motion must be dismissed as premature. If the Court of Appeals dismisses the appeal for jurisdictional or procedural reasons, then I may review the merits of this action. As a result, I will stay this action pending the Court of Appeals' decision on this matter. Fink is directed to keep the Court apprised of the status of his appeal.

Accordingly,

IT IS HEREBY ORDERED that this action is **STAYED**.

IT IS FURTHER ORDERED that Fink shall keep the Court apprised of the status of his appeal.

Dated this 31st day of May, 2012.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippe", written over a horizontal line.

RODNEY W. SIPPEL

UNITED STATES DISTRICT JUDGE